

REMARKS

After entry of this Second After Final Amendment, claims 4-6, 12-13, 15-16, 40, 50, 52 and 58 are pending in the application. Claims 3-6, 12, and 40 are withdrawn from consideration. Claims 1-3, 7-11, 14, 17-39, 41-49, 51, 53-57, and 59 have been cancelled without prejudice. Claim 50 has been amended into independent form including all of the limitations of the base claim and any intervening claims. Reconsideration of the Examiner's rejection is requested.

In the office action dated, February 12, 2007, claims 13, 15-16, 50, 52, and 58 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Gautier '078 in view of Kesten (U.S. Pat. No. 4,452,116). The Examiner asserts that it would have been obvious to one of ordinary skill in the art to have modified Gautier '078 by adding a radial flange to the dies that could laterally engage the bearings (13, 16) and the opposing die, as is generically known and made obvious by Kesten, in order to enhance longitudinal stability of the dies and thus make more accurate cuts in the workpiece. It is submitted that the combination of Gautier in view of Kesten fails to anticipate, teach or suggest the invention as recited in the pending claims.

With respect to claims 13 and 15-16, the Gautier '078 reference does not anticipate, teach, or suggest the improvement of a frame for a low speed mode of operation below 600 linear feet per minute in combination with a die support kit for low speed operation. The die support kit for low speed mode of operation consisting of a first modular die support and a second modular die support, the first modular die support having first and second bearings spaced longitudinally from one another and mounted directly to the base in locations spaced from the columns, each bearing having at least two rollers, each bearing in operable engagement with a raised radial flange associated with one of the first and second ends of the first rotary die to limit linear translation of the first rotary die along the first axis of rotation, and the second modular die support having a first and second bearings, each bearing spaced from one another longitudinally and mounted to the cross members as recited in claim 13. The Gautier '078 reference teaches that bearing 4 primarily will be resisting horizontal forces perpendicular to the plane of the axes 1A and 2A (column 3, lines

34-38), and does not suggest the use of a raised radial flange on the first rotary die to eliminate the need for the bearing 4. The addition of Kesten '116 to the disclosure of Gautier '078 does not overcome these deficiencies in the Gautier '078 reference. At best, the Kesten '116 reference teaches a shaftless die roll 16, where bearings 76', 80' have flanges 88 to cooperatively support the die roll laterally and transversely. (column 7, lines 10-32 and column 7, line 60 – column 8, line 11).

With respect to claim 58, the Gautier '078 reference does not anticipate, teach, or suggest a frame for a low speed mode of operation below 600 linear feet per minute in combination with a die support kit for low speed mode of operation including a first modular die support consisting of a first bearing member and a second bearing member, each bearing member of the first modular die support including at least two rollers maintaining the first rotary die in a stationary rotary position through operable engagement of the rollers with raised radial flanges located on opposite longitudinal ends of the first rotary die, and a second modular die support consisting of a first bearing member and a second bearing member, each bearing member of the second modular die support including at least two rollers maintaining the second rotary die in a stationary rotary position through operable engagement of the raised radial flanges located on opposite longitudinal ends of the first rotary die with the longitudinal ends of the second rotary die as recited in claim 58.

The Gautier '078 reference teaches rollers 13, 16 and bearings 3, 4 supported by (not spaced from) the columns of frame 7 (column 3, lines 19-20), and does not suggest supporting the first and second rotary dies in three-dimensional stationary rotary positions by operable interaction between the first and second modular die supports consisting of first and second bearing members as recited in claim 58. The Gautier '078 reference teaches that bearing 4 primarily will be resisting horizontal forces perpendicular to the plane of the axes 1A and 2A (column 3, lines 34-38), and does not suggest the use of a raised radial flange on the either rotary die to eliminate the need for the bearing 4. The addition of the Kesten '116, discussed in greater detail above, to Gautier '078 does not overcome the deficiencies

of the Gautier '078 reference, and accordingly does not teach or suggest the specific structural configuration set forth in claims 50, 52, and 58.

The Examiner states that there is nothing in the claims that precludes a reference from having additional bearings. However, this interpretation ignores the closed ended transition "consisting of" used for the die support/ bearing elements of the pending claims. Reconsideration of the Examiner's rejection is requested.

A declaration under 37 C.F.R. §1.132 by Alan R. Pfaff was previously submitted to provide the Examiner with an explanation of the teachings of Gautier '078 and Kesten '116 as interpreted by one skilled in the art. As can be seen from a review of the attached declaration, the Gautier '078 and/or Kesten '116 references taken singularly or in any permissible combination, would not teach or suggest to one skilled in the art at the time the invention was made to use only roller bearings mounted to the base for supporting the die in a stationary rotary position, i.e. in three dimensions (x-y-z planes) as recited in independent claims 13 and 58 in combination with a raised radial flange formed on opposite ends of the first rotary die, and/or the use of flanges on the first rotary die to maintain the second rotary die in longitudinal position as recited in claim 58.

Pfaff specifically concludes that it is his opinion as one skilled in the art that the technical disclosure of Gautier '078 "is limited to, or requires the use of, one set of journal block bearings 3 and 4 on the drive side to restrain linear movement of the die rolls transverse to the rotational axes" (see Paragraph 22). Pfaff further states that it is his "opinion that the Gautier device requires both the individual rollers 13 and 16 as well as the journal block bearings 3 and 4 and U-shaped frame as shown in Figure 2 to support and restrain the die rolls 1 and 2 in their operational position." (see Paragraph 22). Pfaff further states that it is his opinion as one skilled in the art that "the Gautier patent relies exclusively on the journal block bearings 3 and 4 and the U-shaped frame to restrain the die rolls 1 and 2 from linear movement along the axis of rotation of the die rolls.

With respect to the addition of the Kesten '116 reference, Pfaff states that there "is no explanation or suggestion in the Gautier patent to use a different

method or to employ the use of an annular flange on one of the die rolls to restrain movement along the rotational axes." (see Paragraph 25). An "addition of the Kesten circumferential flange 88 to the Gautier die rolls would provide little or no benefit and only add costs and needless complexity to the device" according to Pfaff. (see Paragraph 25). Accordingly, in Pfaff's opinion as one skilled in the art, "it would not be obvious ... to add that Kesten feature to the Gautier device." (see Paragraph 25).

Pfaff further points out that the combination of Gautier in view of Kesten does not anticipate, teach or suggest the use of annular flanges on the lower die roll serving a dual purpose in combination with the rollers 44, 48 to restrain both the lower die and, at the same time, the upper die roll along the rotational axes. (see Paragraph 26). These features are specifically set forth and claimed in the pending claims of the present application. The Examiner's consideration of the Declaration under 37 C.F.R. §1.132 is requested.

Respecting Appellant's use of the "consisting of" language for the die support kit in claim 13 and for the first and second modular die supports in claim 58, in the Advisory Action dated May 21, 2007, the Examiner states that: "[I] this reveals the trickiness of using 'consisting of' language, just because the 'die support kit' doesn't have bearing blocks between the columns, doesn't mean that some other named part of the device can't have bearing blocks between the columns." It is submitted that this overbroad interpretation of the claim language effectively reads out the "consisting of" limitation, is against long-standing Federal Circuit precedent and is unsustainable. As stated in MPEP §2111.03, the transitional phrases "comprising", "consisting essentially of" and "consisting of" define the scope of a claim with respect to what unrecited additional components or steps, if any, are excluded from the scope of the claim. "The phrase 'consisting of' signifies restriction and exclusion of unrecited steps or components." Conoco, Inc. et al. v. Energy & Environmental Int'l., L.C. et al., 460 F.3d 1349, 1360 (Fed. Cir. 2006)(citing M.P.E.P. § 2111.03).

The Federal Circuit has set forth a straight forward inquiry where "consisting of" language is used in a phrase in the body of the claim.

~~~~~ ‘Consisting of’ is a term of patent convention meaning that the claimed invention contains only what is expressly set forth in the claim. However, while ‘consisting of’ limits the claimed invention, it does not limit aspects unrelated to the invention. It is thus necessary to determine what is limited by the ‘consisting of’ phrase.”

Conoco, 460 F.3d at 1360. More specifically addressing the Examiner’s apparent position that bearing blocks in the side frame can simply be added on by some other component outside of the claimed die support kit (claims 13) or the first and the second modular die supports (claim 58), the Federal Circuit has advised: “We have explained that ‘consisting of’ does not exclude additional components or steps that are unrelated to the invention.” *Id.* (emphasis added).

Examination of Applicant’s use of “consisting of” language pertaining to the die support kit in claim 13 and the first and second modular die supports in claim 58 fundamentally relates to the structure and bearings that directly support and restrain the first and second die rolls. Applicant’s directed uses of “consisting of” precludes the Examiner from ignoring this claim language by attempting to simply add on additional bearing blocks or die support structure from “some other named part.” Thus, the Examiner’s basis, which effectively reads out the limiting claim language, is improper and reconsideration on this basis requested.

It is respectfully submitted that this Amendment traverses and overcomes all of the Examiner’s objections and rejections to the application as originally filed. It is further submitted that this Amendment has antecedent basis in the application as originally filed, including the specification, claims and drawings, and that this Amendment does not add any new subject matter to the application. Reconsideration of the application as amended is requested. It is respectfully submitted that this Amendment places the application in suitable condition for allowance; notice of which is requested.

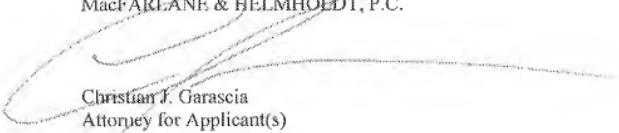
This after final amendment: (1) does not raise new issues that would require further consideration and/or search, since the proposed amendments places a

previously dependent claim in independent format including the limitations of the base claim and any intervening claims; (2) does not raise the issue of new matter, since the proposed amendments have support in the originally filed application including the specification, claims and drawings; (3) does places the application in better form for appeal by materially reducing and/or simplifying the issues for appeal; and/or (4) does not present additional claims without cancelling a corresponding number of finally rejected claims. The after final amendment simplifies the issues on appeal by cancelling without prejudice various claims previously finally rejected or withdrawn from consideration.

If the Examiner feels that prosecution of the present application can be expedited by way of an Examiner's amendment, the Examiner is invited to contact the Applicant's attorney at the telephone number listed below.

Respectfully submitted,

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